

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 1:17-cv-00161-M-LDA

**DEFENDANT'S MOTION TO COMPEL PLAINTIFF'S DEPOSITION BY ORAL
EXAMINATION AND RESPONSES TO DISCOVERY REQUESTS**

NOW COMES the Defendant, Alex and Ani, LLC (hereinafter, “Alex and Ani”), acting by and through its counsel in the above-entitled matter, and hereby respectfully requests that this Honorable Court enter an Order to compel the deposition of Plaintiff Gregory Williams (hereinafter, “Plaintiff”), by oral examination pursuant to Fed. R. Civ. P. 30, and Plaintiff’s responses to Interrogatories and Requests for Production of Documents pursuant to Fed. R. Civ. P. 33 and 34. In further support hereof, Alex and Ani states as follows:

FACTS

The present case arises out of Plaintiff's former employment relationship with Alex and Ani. The present action alleges that Alex and Ani unlawfully discriminated against Plaintiff in violation of the Fair Employment Practices Act, R.I.G.L. § 28-5-1, and the Rhode Island Civil Rights Act of 1990, R.I.G.L. § 42-112-1.

On July 31, 2017 this Court entered a scheduling order with factual discovery to close on January 31, 2018. However, on January 25, 2018, by agreement of the parties, this Court extended that deadline to May 31, 2018, in part because the parties anticipated that this matter might resolve out of court.

On March 29, 2018, Attorney Sally McDonald (“Attorney McDonald”) notified Plaintiff’s counsel that Alex and Ani was in the process of transitioning law firms in this matter, and apologized for any delay in responding to discovery. See attached Exhibit A. In or about April 2018, email correspondence between Plaintiff’s counsel and Defendant’s counsel demonstrate the parties continued to explore a potential settlement of this matter. See attached Exhibit B.

On April 17, 2018, Attorney McDonald notified Plaintiff’s counsel via email that discovery responses were in the mail, and that Alex and Ani wanted to take the Plaintiff’s deposition in this matter. Attorney McDonald stated that Alex and Ani was aware that Plaintiff now resides in Florida, and would have to travel to Rhode Island for the deposition. As such, in lieu of noticing the deposition for a date convenient only for Alex and Ani, Attorney McDonald asked Plaintiff’s counsel for potential dates convenient to Plaintiff stating, “we are willing to work around his schedule to the best of our ability.”

In the same email, Attorney McDonald also informed Plaintiff’s counsel she would be happy to speak with Plaintiff’s counsel regarding information he possessed that he thought could lead to a potential settlement of this case. Attorney Mark Geragos (“Attorney Geragos”) responded to the email chain and advised Plaintiff’s counsel that he might even be able to conduct Plaintiff’s deposition in Florida, for Plaintiff’s convenience. See attached Exhibit C.

On April 18, 2018, Plaintiff's counsel asked Attorney Geragos via email when he would have time to speak regarding this matter. Attorney Geragos informed Plaintiff's counsel he may be in town that Friday [April 20, 2018] or the following week, if Plaintiff's counsel wanted to meet. See attached Exhibit C.

On May 18, 2018, Plaintiff's counsel emailed Attorney McDonald asking her "outer authority" on this matter in order to try to reach a settlement hereof. Less than two weeks later, on May 30, 2018, Plaintiff's counsel emailed Attorney McDonald stating "discovery closes tomorrow [May 31, 2018]," and further stating that he was prepared to try this matter without deposing former and current Alex and Ani employees. Plaintiff's counsel further indicated that he preferred to settle this matter, as opposed to preparing a pre-trial memorandum. See attached Exhibit D.

Attorney McDonald responded and asked Plaintiff's counsel for a brief extension of the discovery deadline, as she and Attorney Geragos had been trying to accommodate the Plaintiff for his convenience, and also communicating in good faith in an attempt to settle this matter. When she received no response, Attorney McDonald then filed a deposition notice before the close of the discovery deadline, selecting June 12, 2018 for the date of Plaintiff's deposition. On May 31, 2018, also before the close of discovery, Attorney McDonald propounded Interrogatories and Requests for Production of Documents upon the Plaintiff. See attached Exhibit D.

Despite continued efforts to accommodate Plaintiff and his counsel by Attorney McDonald and Attorney Geragos, on June 4, 2018, Plaintiff's counsel advised Attorney McDonald that Plaintiff would not respond to the discovery requests, attend a deposition, or stipulate to any

extension of the discovery deadline. Attorney McDonald was shocked by this response from Attorney Ed Formisano (“Attorney Formisano”), whom she knows personally and has worked with for many years. See attached Exhibit E.

On June 8, 2018, Attorney McDonald emailed Attorney Formisano in an attempt to resolve this discovery dispute in good faith. A motion to compel was attached to the email, which Attorney McDonald said would be filed if necessary. After receiving no response, on June 12, 2018, at 11:01 am, Attorney McDonald again emailed Attorney Formisano asking him to notify her if the discovery dispute could be resolved or not. On June 13, 2018, at 3:14 pm, Attorney Formisano finally responded stating Plaintiff’s directive had not changed since Attorney Formisano last emailed Attorney McDonald. See attached Exhibit F.

LAW

Under Fed. R. Civ. P. 37(d), Alex and Ani is entitled to an Order compelling Plaintiff to attend his deposition, and respond to Defendant’s discovery requests. “The Supreme Court has long recognized that the Federal Rules of Civil Procedure are to be construed liberally in favor of discovery.” *Ameristar Jet Charter, Inc. v. Signal Composites, Inc.*, 244 F.3d 189, 192 (1st Cir. 2001) (citing *Hickman v. Taylor*, 329 U.S. 507 (1947)) (holding “[T]he deposition-discovery rules are to be accorded a broad and liberal treatment.”). Against this backdrop are several limitations on pre-trial discovery, namely (1) when the discovery sought is unreasonably cumulative, duplicative, or obtainable from some other source; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; and (3) the burden or

expense of the proposed discovery outweighs its likely benefit. *See Ameristar Jet Charter*, 244 F.3d at 192 (citing Fed. R. Civ. P. 26(b)(2)).

ANALYSIS

In this case, none of the exceptions in Fed. R. Civ. P. 30(a)(2) apply. Despite continued efforts to accommodate Plaintiff's schedule, Plaintiff failed to provide dates he was available for a deposition. Plaintiff even failed to provide dates when Attorney Geragos suggested he conduct the deposition in Florida for Plaintiff's convenience. Alex and Ani formally noticed Plaintiff's deposition before the close of discovery, in addition to propounding written discovery requests. Since entering her appearance on March 29, 2018, Attorney McDonald has fully responded to Plaintiff's discovery requests, as well as emails from Plaintiff's counsel, and requests to speak about a potential settlement. When Alex and Ani requested a brief extension of the discovery deadline, Plaintiff's counsel did not extend that same courtesy and did not promptly reply to emails regarding a resolution of this discovery dispute.


This is not a scenario where the information sought is cumulative, duplicative, or obtainable from another source. Plaintiff in this case has information that no other witness can provide. Also, this is not the scenario where a party provided unreasonable notice after the close of the discovery period. *See Hart v. United States*, 772 F.2d 285, 287 (6th Cir. 1985) (holding two to three hour notice was unreasonable when deposition site was thirty-five miles away and scheduled at night). Geragos & Geragos, P.C. entered its appearance in this case on March 29, 2018, and for the next two (2) months repeatedly tried to acquire deposition dates convenient for the Plaintiff. Subsequently, they noticed Plaintiff's deposition before the discovery deadline, as

well as propounding written discovery. The burden or expense of obtaining this discovery from Plaintiff does not outweighs its likely benefit to Alex and Ani. In the event that Alex and Ani is deprived of the opportunity to conduct basic discovery, it is unlikely they will be able to put forth their case.

WHEREFORE, Alex and Ani hereby respectfully asks that this Honorable Court enter an Order as follows:

- a) Compelling the Plaintiff to attend a deposition at a date and time to be determined, but no later than thirty (30) days from the date of the hearing on the within Motion;
- b) Compelling the Plaintiff to respond to the written discovery requests;
- c) Granting any and all other such relief as this Honorable Court deems just and appropriate.

ALEX AND ANI, LLC
By its Attorneys,




Sally P. McDonald
Geragos & Geragos P.C.
44 South Figueroa Street
Los Angeles, CA 90017-3411
(213) 625-3900
(213) 232-3255
Sally@geragos.com

DATED: June 14, 2018

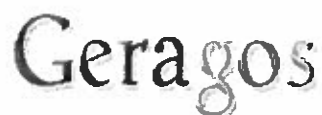
GOOD FAITH CERTIFICATION

The movant has, in good faith, conferred or attempted to confer with the person or party failing to cooperate with discovery in an effort to resolve deposition scheduling issues and a response to discovery requests without court action.



Sally P. McDonald

Exhibit A



Sally McDonald <sally@geragos.com>

RE: Williams

1 message

V. Edward Formisano <edf@formisanoandcompany.com>
To: Sally McDonald <sally@geragos.com>

Thu, Mar 29, 2018 at 4:35 PM

Sally-

No worries.

Who's coming on board?

V. Edward Formisano, Esq.

FORMISANO AND COMPANY

100 Midway Place, Suite 1

Cranston, RI 02920

Phone: (401) 944-9691, Ext 115

FAX: (401) 944-9695

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Website: www.formisanoandcompany.com

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Thank you for your cooperation.

From: Sally McDonald <sally@geragos.com>
Sent: Thursday, March 29, 2018 4:32 PM
To: V. Edward Formisano <edf@formisanoandcompany.com>
Subject: Williams

Hi Ed,

We are in the process of transitioning law firms in the Williams matter.

My apologies for the delay in getting you discovery responses, and thank you for your patience.

Best,

Sally

—

SALLY P. McDONALD, ESQ.



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Exhibit B



Sally McDonald <sally@geragos.com>

RE: Williams & Alex & Ani

1 message

V. Edward Formisano <edf@formisanoandcompany.com>
To: Sally McDonald <sally@geragos.com>
Cc: Diane Lepore <dlepore@formisanoandcompany.com>

Fri, Apr 6, 2018 at 3:42 PM

Got it.

You too!

V. Edward Formisano, Esq.

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Thank you for your cooperation.

From: Sally McDonald <sally@geragos.com>

Sent: Friday, April 06, 2018 3:41 PM
To: V. Edward Formisano <edf@formisanoandcompany.com>
Cc: Diane Lepore <dlepore@formisanoandcompany.com>
Subject: Re: Williams & Alex & Ani

Looks good. Please call my cell at (401) 465-3557. Thanks and have a great weekend!

On Fri, Apr 6, 2018 at 3:40 PM, V. Edward Formisano <edf@formisanoandcompany.com> wrote:

Sally-

How does Wednesday at 4pm look?

Thanks-

V. Edward Formisano, Esq.

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Thank you for your cooperation.

=====

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From: Sally McDonald <sally@geragos.com>
Sent: Friday, April 06, 2018 3:09 PM
To: V. Edward Formisano <edf@formisanoandcompany.com>
Subject: Re: Williams & Alex & Ani

Hi Ed,

Can we schedule a time on Wednesday? Today is booked, I have a mediation on Monday and a deposition on Tuesday (I need a vacation).

Thanks,

Sally

On Fri, Apr 6, 2018 at 2:12 PM, V. Edward Formisano <edf@formisanoandcompany.com> wrote:

Sally-

Do you have time this afternoon or Monday to touch base on this?

Thanks-

V. Edward Formisano, Esq.

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Website: www.formisanoandcompany.com

Exhibit C



Sally McDonald <sally@geragos.com>

RE: Williams v. Alex and Ani

1 message

V. Edward Formisano <edf@formisanoandcompany.com>

Wed, Apr 18, 2018 at 4:26 PM

To: Mark Geragos <mark@geragos.com>

Cc: Diane Lepore <dlepore@formisanoandcompany.com>, Sally McDonald <sally@geragos.com>

Whatever works best for you.

V. Edward Formisano, Esq.

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Thank you for your cooperation.

From: Mark Geragos <mark@geragos.com>

Sent: Wednesday, April 18, 2018 4:26 PM

To: V. Edward Formisano <edf@formisanoandcompany.com>

Cc: Diane Lepore <dlepore@formisanoandcompany.com>; Sally McDonald <sally@geragos.com>

Subject: Re: Williams v. Alex and Ani

I may be in town Friday or next week. Want to meet?

On Wed, Apr 18, 2018 at 1:07 PM V. Edward Formisano <edf@formisanoandcompany.com> wrote:

Mark-

I bumped into Sally earlier today and she suggested that I speak to you regarding this matter.

Please let me know when you have a few minutes tomorrow or Friday.

Thank you-

V. Edward Formisano, Esq.

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Thank you for your cooperation.

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From: Mark Geragos <mark@geragos.com>
Sent: Tuesday, April 17, 2018 1:41 PM
To: Sally McDonald <sally@geragos.com>
Cc: V. Edward Formisano <edf@formisanoandcompany.com>
Subject: Re: Williams v. Alex and Ani

I also might be able to do it in Florida also

On Tue, Apr 17, 2018 at 9:38 AM Sally McDonald <sally@geragos.com> wrote:

Hi Ed,

Alex and Ani's responses to Williams' discovery requests should be in the mail to you today or tomorrow.

Additionally, Mark Geragos has advised me that he would like to take your client's deposition if this matter cannot be resolved, so please provide me with some convenient dates for the same. We are aware that he will have to travel here from Florida. As such, we are willing to work around his schedule to the best of our ability. Additionally, you mentioned you would like to take some depositions. Please advise with regard to whose depositions you would like to take.

Finally, you mentioned that you felt you had some information to share with Mark and me which may move the needle on settlement. We would be happy to review the same.

Thanks and have a good day,

Sally

—

SALLY P. McDONALD, ESQ.



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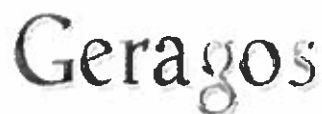
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Geragos & Geragos

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Geragos & Geragos

Exhibit D



Sally McDonald <sally@geragos.com>

Williams

1 message

V. Edward Formisano <edf@formisanoandcompany.com>
To: Sally McDonald <sally@geragos.com>
Cc: Diane Lepore <dlepore@formisanoandcompany.com>

Fri, May 18, 2018 at 3:40 PM

Sally-

Can you give me a sense as to the outer limits of your authority so we can try to wrap this up?

Thanks-

V. Edward Formisano, Esq.

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Thank you for your cooperation.

Exhibit E



Sally McDonald <sally@geragos.com>

RE: Williams v. Alex and Ani

1 message

V. Edward Formisano <edf@formisanoandcompany.com>

Mon, Jun 4, 2018 at 3:53 PM

To: Sally McDonald <sally@geragos.com>

Cc: Diane Lepore <dlepore@formisanoandcompany.com>

Sally-

The time period for discovery has passed. Given this, Mr. Williams will not be responding to the attached discovery or attending a deposition. Furthermore, he will not stipulate to any further extension of the pretrial order deadlines.

Take care-

Ed

V. Edward Formisano, Esq.

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Thank you for your cooperation.

From: Sally McDonald <sally@geragos.com>
Sent: Thursday, May 31, 2018 10:33 AM
To: V. Edward Formisano <edf@formisanoandcompany.com>
Cc: Diane Lepore <dlepore@formisanoandcompany.com>; Mark Geragos <mark@geragos.com>; Ingrid Polanco <ingrid@geragos.com>
Subject: Williams v. Alex and Ani

Hi Ed,

I would be happy to speak with you this morning. I sent an email asking what time would be good for you.

In addition to the deposition notice we sent yesterday, attached please find Interrogatories and Requests for Production. We will mail hard copies as well.

Thanks,

Sally

—

SALLY P. McDONALD, ESQ.



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Exhibit F



Sally McDonald <sally@geragos.com>

RE: Williams v. Alex and Ani - Discovery Dispute

1 message

V. Edward Formisano <edf@formisanoandcompany.com>
To: Sally McDonald <sally@geragos.com>
Cc: Diane Lepore <dlepore@formisanoandcompany.com>

Wed, Jun 13, 2018 at 3:13 PM

Sally-

Mr. Williams' directive to me has not changed since I last emailed you.

Take care-

V. Edward Formisano, Esq.

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Thank you for your cooperation.

From: Sally McDonald <sally@geragos.com>
Sent: Tuesday, June 12, 2018 11:02 AM
To: V. Edward Formisano <edf@formisanoandcompany.com>
Cc: Diane Lepore <dlepore@formisanoandcompany.com>; Mark Geragos <mark@geragos.com>; Chelsea Kelly <chelsea@geragos.com>
Subject: Re: Williams v. Alex and Ani - Discovery Dispute

Hi Ed,

Please let me know if we can work this discovery dispute out, or if we need to file this.

Thanks,

Sally

On Fri, Jun 8, 2018 at 4:03 PM, Sally McDonald <sally@geragos.com> wrote:

Ed,

Please accept this email as my attempt to resolve this discovery dispute in good faith.

Please see a Motion to Compel, attached, which we will file if necessary, although I sincerely hope it will not be. I don't think the court will be favorably impressed.

Thanks,

Sally

—
SALLY P. McDONALD, ESQ.



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SALLY P. McDONALD, ESQ.



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CERTIFICATE OF SERVICE

I certify that a copy of this document filed through the ECF system will be sent electronically by the ECF system to the registered participants as identified on the Notice of Electronic Filing (NEF) on June 14, 2018.

/s/ Ingrid Polanco

Ingrid Polanco